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RELEVANT DOCKET ENTRIES

Date
1969

Aug. 1—1. File Complaint.

Aug. 1—Issue Summons.

Aug. 1—2. File Pltf's. Motion for preliminary injunction, with memo.

Aug. 1—3. File Summons with acceptance of service by Robert Backstein, atty. for defts.

Aug. 4—4. File copy of Notification and Certificate to Hon. Richard H. Chambers from Judge Craig re 3 judge appointments.

Aug. 11—5. Enter and File Order designating Hon. Walter Ely, U. S. Circuit Judge, Hon. Walter E. Craig and Hon. William P. Copple, U. S. District Judges as THREE JUDGE court to hear and determine this cause; R. Chambers.

Aug. 22—6. Enter and file Order that Petition for Preliminary Injunction is set for hearing Friday, Oct. 31, 1969 at 10:00 a.m. in Courtroom 1, before Judge Walter Ely, Walter E. Craig, and Wm. P. Copple.

Aug. 22—Copies Order of 8/22/69 mailed to Judge Walter Ely, Attorneys Gust, et al and Robert Backstein, and copies delivered to Judge Copple and Judge Craig.

Oct. 24—7. File Pltf's. First Amended Complaint.

Oct. 24—8. File Defts'. ANSWER to First Amended Complaint.

Oct. 24—9. File Stipulation; and Enter and File Order that the Clerk remove all exhibits attached to the original complaint in this case and attach such exhibits to the First Amended Complaint.

Oct. 24—10. File Stipulated Statement of Facts.

Oct. 27—11. File Defts'. objection to Motion for Preliminary Injunction, with memo.

Oct. 27—12. File Defts'. affidavit of mailing.

Oct. 27—13. File Pltf's. Reply memorandum.

Oct. 31—Minute Entry: This case called for hearing before the 3 judges on Pltf's. Motion for preliminary injunction. Fred H. Rosenfeld, Fred W. Rosenfeld, Jane Rex Greer pfds. for pltf. Alan Polley present for defts. Counsel stipulation that this will be a full hearing on the merits and not only a hearing of pltf's. Motion for preliminary injunction. Order matter submitted and taken under advisement; u/a.

Nov. 25—14. File OPINION and Enter and File Order that the defts. will be permanently enjoined from the issuance of any securities purortedly authorized by the challenged election, and the pltfs.' counsel will submit a proposed form of judgment. (dated 11/17/69); WE, WEC, & WPC

Nov. 25—Copies of opinion and order mailed to Gust et al, City Atty. and Atty. Gen.

Dec. 17—15. File Reporter's Transcript of proceedings dated Oct. 31, 1969. (with copy)

Dec. 17—16. Enter and File Judgment that Article 7, Sec. 13, Arizona State Constitution; Article 9, Section 8, Arizona State Constitution; Title 9, Section 523, Arizona Revised Statutes; and Title 35, Section 455, Arizona Revised Statutes; are violative of the 14th Amendment to the United States Constitution insofar as said sections of the Constitution of the State of Arizona and satutes of the State of Arizona restrict elections to real property taxpayers who are qualified electors of the subdivision and is further ordered that the special election held on June 10, and pursuant to City of Phoenix Ordinance #S-4747, be declared, and the same is declared, to be null and void and have no force and effect; Further ordered that all of the above captioned defts. etc. be and they are permanently enjoined from taking any further

action to sell or issue any bonds purportedly authorized by the special bond election held on June 10, 1969; 3 judges.

Dec. 17—Copies of judgment mailed to Gust et al, City Attorney and Atty. General.

Dec. 19—17. File Defts'. Notice of appeal to the Supreme Court of the U. S., with proof of service upon Gust et al. (copies to 3 judges)

Dec. 22—Record on appeal transmitted to Clerk, U. S. Supreme Court, Washington, D. C.

Jan. 9,—1970 Record on appeal hand carried to U. S. Supreme Court by Rex Lee (original record having been lost on 12/22/69 in the U. S. Mails), this date.

APPENDIX

Supreme Court of the United States

OCTOBER TERM 1969

No. 1066

CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITES, CHARLES CASE, JOHN F. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, Members of and constituting the City Council of the City of Phoenix, Arizona,

Appellants,

versus

EMILY KOLODZIEJSKI,

Appellee,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

FILED JANUARY 12, 1970

PROBABLE JURISDICTION NOTED FEBRUARY 24, 1970

GUST, ROSENFELD & DIVELBESS
300 Security Building
Phoenix, Arizona 85004
252-6547
Attorneys for Plaintiff

IN THE

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF ARIZONA

EMILY KOLODZIEJSKI, Plaintiff, vs. CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITES, CHARLES CASE, JOHN F. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, Members of and constituting the City Council of the City of Phoenix, Arizona, Defendants.	NO. Civ 69-335 PHX.

FIRST AMENDED COMPLAINT

Plaintiff, for her cause of action, alleges as follows:

I.

The jurisdiction of this Court over this action is invoked under Title 28 U.S.C. 1331. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of $10,000 and arises under the Constitution and laws of the United States, and particularly under the Fourteenth Amendment to the Constitution of the United States, 28 U.S.C. 1331.

II.

This is also an action to redress by injunctive relief the deprivation, under color of State law, of rights, privileges and imunities

secured to plaintiff by the Constitution of the United States, and particularly the Fourteenth Amendment thereto, R.S. 1979, 42 U.S.C. 1983.

III.

The jurisdiction of this Court is, therefore, further invoked under Title 28 U.S.C. 1343 (3) (4), this being an action, as aforestated, authorized by the laws of the United States to redress by an action for injunctive relief the deprivation, under color of State law, of rights, privileges and immunities secured to plaintiff by the Constitution and laws of the United States.

IV.

This is also a case where the plaintiff is seeking a declaration of her rights under the Constitution and laws of the United States, and under Title 28 U.S.C. 2201, 2202. This Court in a case of actual controversy within its jurisdiction may declare the rights of plaintiff seeking such declaration.

V.

This is also an action which seeks injunctive relief restraining the enforcement, operation and execution of a state constitutional provision and state statutes by restraining the action of officers of said State in the enforcement and execution of such constitutional provision and statutes upon the ground that the state constitutional provision and statutes on their face and as construed and applied to this plaintiff, violate the provisions of the Fourteenth Amendment to the United States Constitution and, therefore, pursuant to Title 28, U.S.C. 2281, 2284, the application for such injunctive relief should be heard and determined by a district court of three judges.

VI.

That plaintiff is a resident of the City of Phoenix, Maricopa County, Arizona, and is now and was on June 10, 1969, a qualified elector thereof but is not now nor was she on June 10, 1969, a real property taxpayer of said City.

VII.

That the corporate defendant, the City of Phoenix, Arizona, is a municipal corporation organized and existing under the laws of the State of Arizona, that the individual defendants are members of the City Council of the City of Phoenix, Arizona.

VIII.

That Plaintiff, though not an owner of real property, rents her place of abode, that Plaintiff shares in the responsibility for the payment of real property taxes with all other residents of the City of Phoenix, that Plaintiff pays real property taxes levied upon her place of abode, and water charges, through payment of her rent, that increased real property taxes and increased water charges will necessarily increase Plaintiff's future rental costs. That for these reasons, and for other reasons, Plaintiff, and others of her class are interested in and affected by the results of the election.

IX.

The Federal question arising herein is the violation of Plaintiff's rights protected by the Fourteenth Amendment of the United States Constitution.

X.

That the defendant, City of Phoenix, did cause an election to be held on June 10, 1969, for the purpose of presenting to the real property taxpayers of the city, who are also in all respects qualified electors thereof a number of questions pertaining to the issuance of municipal utility revenue bonds, municipal nonutility (airport) revenue bonds and municipal general obligation bonds in the total aggregate amount of $173,000,000 to accomplish certain specific city purposes.. The types of bonds to be issued, the amount of money to be raised and the purposes to be accomplished are set forth in Ordinance No. S-4747 as adopted by the Council of defendant City on May 5, 1969, which ordinance contains a form of ballot which is identical in content to the

ballots made available to those permitted to vote in the aforementioned election. Said ordinance, marked Exhibit A, is attached hereto and made a part hereof.

XI.

That in order to vote in said election the defendant City required each person desiring to vote to execute an affidavit stating that said person was a qualified elector and also a real property taxpayer of the City. Plaintiff, being unable to sign such an affidavit, did not vote in the election.

XII.

That said election was held and the returns canvassed in accordance with the existing laws of the State of Arizona. That a majority of the persons voting in said election voted in favor of the issuance of the bonds for each purpose specified in the ballot.

XIII.

That after the holding of said election and prior to the canvass thereof, the United States Supreme Court declared invalid elections held wherein the franchise to vote excluded otherwise qualified electors.

XIV.

That in limiting the right to vote to qualified electors who were also real property taxpayers thereof, defendant selectively disenfranchised plaintiff and all others of her class from voting in said election, that defendant's actions thus deprived plaintiff and all others of her class the right to vote, which right is protected by the Fourteenth Amendment to the United States Constitution and therefore said election is void.

XV.

That Plaintiff is informed and believes, and upon such information and belief alleges, that unless restrained by order of this Court, that the City Council of the City of Phoenix, Arizona, will undertake to institute further proceedings, all of which will lead

to the sale and issuance of bonds, as authorized at the June 10, 1969, election.

XVI.

That by selling and issuing said bonds, the City of Phoenix, through the operation of its water department, airport and through the levy of general ad valorem taxes, may be obligated to increase water charges, increase airport rentals and miscellaneous charges and may cause additional taxes to be levied to retire the bonds and Plaintiff will be directly or indirectly affected by said increased charges, rentals and taxes; that in the alternative, in issuing said bonds, which are void, the defendant will injure and damage the good name, reputation, financial standing and credit rating of the defendant City, thus adversely affecting the City's future borrowing ability and capacity and causing the City to pay increased costs on all future municipal obligations. That Plaintiff and all others of her class and all residents of the City of Phoenix will therefore suffer irreparable damage for which Plaintiff has no plain, speedy and adequate remedy at law in either the courts of the State of Arizona or in the courts of the United States.

That unless an injunction is issued herein within a relatively short time, enjoining defendants and each of them from selling and issuing all bonds authorized by the aforesaid June 10 election, which bonds are void, plaintiff will suffer the damages alleged above.

WHEREFORE, Plaintiff prays:

1. That a three-Judge Panel be convened in accordance with Title 28, Section 2281, and following, United States Code.

2. That the Court adjudge and declare to be in violation of the Constitution of the United States, and therefore void, all provisions of the Constitution and statutes of Arizona which require the ownership of property and the payment of taxes thereon a condition of voting in certain elections in the State, and adjudge and decree the election held by the City of Phoenix on June 10, 1969, to be null and void.

3. Issue a preliminary and permanent injunction:

(a) Restraining Defendants, and each of them, from enforcing, executing, administering, or in any manner giving effect to the provisions of the Constitution and statutes of Arizona, and to any city ordinances adopted pursuant thereto, which require the ownership of property and the payment of taxes thereon a condition of voting in certain elections in that State.

(b) Restraining Defendants, and each of them, from issuing any bonds authorized at the election held on June 10, 1969.

4. Grant plaintiff such other and further relief as may be just and equitable.

Respectfully submitted this 24th day of October, 1969.

GUST, ROSENFELD & DIVELBESS
By

Copy Delivered to Alan Polley,
Assistant City Attorney, Phoenix, Arizona
at —— o'clock —.M., this
24th day of October, 1969.

County of Maricopa)
) ss.
STATE OF ARIZONA)

EMILY KOLODZIEJSKI, being first duly sworn, upon oath deposes and says:

That she is the plaintiff in the above and foregoing Complaint and knows the contents thereof; that the matters and things therein stated are true to her own knowledge, except those matters stated upon information and belief, and as to those, she believes them to be true.

_____

SUBSCRIBED and sworn to before me this 23rd day of October, 1969.

_____

Notary Public

My Commission Expires: Sept. 12, 1972.

A copy of the foregoing mailed
this —— day of October, 1960,
to:

HONORABLE GARY K. NELSON
Attorney General
State Capitol Building
1700 W. Washington Street
Phoenix, Arizona

_____

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF ARIZONA

EMILY KOLODZIEJSKI,
Plaintiff,
-vs-
CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITES, CHARLES CASE, JOHN F. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, Members of and constituting the City Council of the City of Phoenix, Arizona,
Defendants.

NO. Civ 69-335-PHX.

ANSWER TO FIRST AMENDED COMPLAINT

Defendants answer the first amended complaint heretofore filed herein by alleging that certain bond election held June 10, 1969 in the City of Phoenix contained propositions relating to revenue bonds and general obligation bonds and defendants admit all allegations of said complaint as they relate to revenue bonds, but insofar as the allegations of the complaint relating to general obligation bonds, defendants admit, deny and allege as follows:

I.

Answering the allegations of Paragraph I of said complaint, it is denied that the matter in controversy involves more than the sum of $10,000 or any other sum of money or that it arises under

the Constitution of the United States or involves any Federal question under the Constitution of the United States.

II.

Deny that this action arises under the Constitution of the United States and deny that there has been any threat of deprivation under the color of any Statute or Constitutional provision of the State of Arizona of any right, privilege or immunity secured to plaintiff or other similarly situated by the Constitution of the United States.

III.

Admit the allegations contained in Paragraphs 4, 6, 7, 8, 10, 11, 12 and 15.

IV.

Deny the allegations contained in Paragraphs 3, 5, 9, 13 and 14.

V.

Answering the allegations of Paragraph 16 of said complaint, admit the allegation that by selling and issuing said bonds, the City of Phoenix through the operation of its Water Department, Airport and through the levying of general ad valorem taxes, may be obligated to increase water charges, increase Airport rentals and miscellaneous charges and may cause additional taxes to be levied to retire the bonds and that plaintiff may be indirectly affected by said increased charges, rentals and taxes and deny each and every allegation therein remaining.

VI.

Answering the complaint as a whole, deny each and every allegation hereinabove specifically not admitted.

WHEREFORE, defendants pray as follows:

1. That a three-judge panel be convened in accordance with Title 28, Section 2281, and following, United States Code.

2. That the Court adjudge and declare all provisions of the

Constitution and Statutes of Arizona which require the ownership of property and the payment of taxes theron as a condition of voting in general obligation bond elections in the State of Arizona and adjudge and decree the election held by the City of Phoenix on June 10, 1969 as related to general obligation bond propositions legal and effective and not in violation of the Constitution of the United States.

3. That no preliminary or permant injunction be issued relating to general obligation bonds.

4. That such further and other relief as may be just and proper in the premises be granted defendants.

Respectfully submitted this 24th day of October, 1969.

ROBERT J. BACKSTEIN
City Attorney

By /s/ Alan K. Polley
ALAN K. POLLEY
Assistant City Attorney
930 Municipal Building
251 West Washington St.
Phoenix, Arizona 85003

Copy of the foregoing Answer mailed this 24th day if October, 1969, to:

GUST, ROSENFELD & DIVELBESS
Security Building
Phoenix, Arizona 85004
Attorneys for Plaintiff

HONORABLE GARY K. NELSON
Attorney General
State Capitol Building
1700 West Washington
Phoenix, Arizona

/s/ Alan K. Polley
Alan K. Polley

STATE OF ARIZONA)
) ss.
County of Maricopa)

MILTON H. GRAHAM, being first duly sworn, upon oath deposes and says:

That he is Mayor of the City of Phoenix, defendant in the above entitled action and knows the contents thereof; that the matters and things therein stated are true to his own knowledge, except those matters stated upon information and belief, and as to those, he believes them to be true.

/s/ Milton H. Graham

MILTON H. GRAHAM

SUBSCRIBED AND SWORN to before me this 24th day of October, 1969

/s/ Helen Ashman

Notary Public

My Commission expires: April 4, 1970

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF ARIZONA

EMILY KOLODZIEJSKI, Plaintiff, vs. CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITES, CHARLES CASE, JOHN F. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, Members of and constituting the City Council of the City of Phoenix, Arizona, Defendants.	NO. Civ-69-335 PHX. STIPULATED STATEMENT OF FACTS

On June 10, 1969, the City of Phoenix held a municipal bond election and submitted to the electorate qualified to vote therein ten questions involving various amounts of bonds sought to be issued. The election was called and held in accordance with the Constitution and statutes of the State of Arizona relative to such elections.[1]

The ballot submitted to the electorate qualified to vote in said election was identical in content to that contained in Exhibit A

[1] [Provisions of Article 9, Section 8, Arizona Constitution, Article 7, Section 13, Arizona Constitution, 9-782 Arizona Revised Statutes; Section 35-451 and following Arizona Revised Statutes (general obligation bonds) Section 9-521 and following (revenue bonds).]

attached to the Complaint and incorporated by reference into this Statement. Pursuant to the above mentioned constitutional and statutory requirements, said election was restricted to real property taxpayers who were also in all respects qualified electors at the time of the election. The notice of the election similarly gave notice of the election as to all persons who were real property taxpayers and qualified electors (see Ordinance No. S-4747, attached as Exhibit A to plaintiff's complaint which is herein incorporated by reference into this statement.)

I.

In order to vote in said election the defendant City required each person desiring to vote to execute an affidavit stating that said person was a qualified elector and also a real property taxpayer of the City. In order to aid the election boards in deciding whether prospective voters were eligible to vote in said election legal opinions were disseminated to the various voting boards stating the qualifications of those persons eligible to vote. A copy of said opinion is attached to these facts marked Exhibit "1" and incorporated by reference herein.

II.

The plaintiff is an unmarried woman who is neither a widow nor a veteran of service in the armed forces of the United States prior to September 17, 1945; the plaintiff does not own real property within the boundaries of the City of Phoenix and did not so own real property on June 10, 1969. The plaintiff was not required to pay any real property tax at the time of the election.

III

Not meeting the legal requirements to vote in said election plaintiff did not vote.

IV.

Neither plaintiff nor any other person brought any proceedings in any of the state courts of Arizona contesting the June 10, 1969, election.

V.

Plaintiff is interested pecuniarily in the outcome of the election as shown below. Plaintiff is also an interested citizen of the City of Phoenix wishing to take part in the civic affairs of the city and vote in all municipal elections.

VI.

The plaintiff rents her place of abode within the City of Phoenix. Plaintiff pays excise taxes to the City of Phoenix on all items purchased within said City of Phoenix which are subject to said excises. The plaintiff uses the municipal water of the defendant, but the plaintiff does not directly pay water bills, said bills being paid by the landlord of her place of abode; however, the cost of the water service at the plaintiff's place of abode is a normal operating expense of the plaintiff's landlord and is taken into consideration in determining the rental charge plaintiff pays on her place of abode. Plaintiff does not pay real property taxes as aforesaid, however, the amount of money paid as real property taxes is a cost of doing business of the plaintiff's landlord and as such has a material bearing on the cost of the plaintiff's rental payments.

VII.

The redemption of all principal and interest on the water revenue bonds shall be paid solely from water revenues of the city.

VIII.

The redemption of all principal and interest on the airport revenue bonds shall be paid solely from the revenues of the municipal airport operation of defendant city.

IX.

The defendant, City of Phoenix, annually collects and pays into the general fund of the City approximately $22,000,000[2] from various excise, sales and franchise taxes instituted by said city. The

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[2] Source: City of Phoenix, Arizona Annual Budget, Revenue Estimates for Fiscal Year 1969-70, Pg. A-1.

excise taxes paid by plaintiff eventually are paid into the general fund of the City of Phoenix.

X.

All general obligation bonds sought to be issued by the defendant pursuant to the June 10 election are paid from funds paid to the general fund of the City but placed in separate funds designated principal and interest redemption funds respectively. The City of Phoenix annually causes to be levied real property taxes to pay a portion of the cost of the operation of the City of Phoenix, including debt service thereon on all general obligation bonds; however, all monies raised from the levy of ad valorem taxes by the said City of Phoenix are paid into the general fund of the City of Phoenix and commingled therein with the monies accumulated by the institution of excise taxes. After said monies are commingled in said general fund, the City of Phoenix annually pays the debt service when due on its general obligation bonds.

The source of funds for the 1969-70 fiscal year shows $2,350,200 of the annual general obligation debt service requirements of $5,594,937 to be paid through levy of ad valorem property taxes, the remaining $3,244,773 to be paid from other sources. The ratio between real property tax collections and other source monies is representative of the recent years apportionments for debt service on general obligation bonds. Plaintiff directly contributes to all funds raised from sources other than real property taxes, and plaintiff is derivatively affected by the levy of a real property tax insofar as it affects the cost of goods and services.

XI.

On June 16, 1969, the Supreme Court of the United States rendered its opinion in the cases of Kramer v. Union Free School District No. 15 and Cipriano v. City of Houma. On June 23, 1969, the defendant canvassed the result of the June 10 election and declared that each and every question had carried. In holding the election, the defendant's procedure complied in all respects

with the Constitution and laws of the State of Arizona. The defendant intends to institute proceedings for the sale of the bonds authorized by the election held June 10, 1969.

Respectfully submitted this —— day of October, 1969.

GUST, ROSENFELD & DIVELBESS

By _____

Attorneys for Plaintiff
ROBERT J. BACKSTEIN
City Attorney

By Alan K. Polley
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

EMILY KOLODZIEJSKI,
Plaintiff.
vs.
CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITIES, CHARLES CASE, JOHN J. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, Members of and constituting the City Council of the City of Phoenix, Arizona,
Defendants.

No. Civ-69-335 Phx.
OPINION AND ORDER

Before: Walter Ely, Circuit Judge, and Walter E. Craig and Wm. P. Copple, District Judges

PER CURIAM:

The above entitled cause was instituted pursuant to Title 42 U.S.C. Section 1983, Title 28 U.S.C. Section 1343 (3) (4), and Title 28 U.S C. Sections 2201 and 2202.

Plaintiff, a resident of the City of Phoenix, within the District of Arizona, seeks to enjoin the City of Phoenix, a body politic, the Mayor and members of the City Council, from issuing certain bonds approved at a special election June 10, 1969, called for that purpose. The election was duly and regularly called by the City, pursuant to Article 7, Section 13 of the Arizona Constitution, and Title 9, Section 781, A.R.S.[1] (35-452).

[1] Article 7, Section 13, Constitution of Arizona: "Questions upon bond issues or special assessments shall be submitted to the vote of real property

The propositions offered to the electorate were ten in number, the first two related to Revenue Bonds: (1) for the Municipal Water System, $53,900,000, (2) for the Airport and related facilities, $58,900,000. The remaining eight propositions related to General Obligation Bonds: (3) Sewer System, $37,000,000, (4) Parks and Playgrounds, $9,000,000, (5) Municipal Buildings, $1,000,000, (6) Fire Department, $1,200,000, (7) Police and Public Safety Buildings, $4,500,000, (8) Maintenance and Service Facilities, $1,500,000, (9) Sanitary Landfills, $2,250,000, (10) Library, $4,000,000.

Pursuant to the Arizona Constitution and Statutes, the electorate was limited to duly qualified electors who, in addition, were real property taxpayers. Plaintiff is a duly qualified elector of the City of Phoenix, but not a real property taxpayer.

The canvass of the election took place June 23, 1969, and the several propositions were declared to be carried. Under Arizona law the period during which an elector may contest an election is limited to five (5) days following the canvass of the election and the declaration of the results thereof. 16 A.R.S. 1202, 1204.

This action was instituted August 1, 1969, in this Court, no State action having been instituted. A Three Judge Court was convened to hear the matter, pursuant to Title 28 U.S.C. Sections 2281 and 2284. The matter was submitted and argued to the Court upon an agreed Statement of Facts consistent with the foregoing statement.

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tax payers, who shall also in all respects be qualified electors of this state, and of the political subdivision thereof affected by such questions."

Title 9, Section 782, A.R.S.: "When the governing body of an incorporated city or town determines to borrow money under the provisions of this article, the question of issuing bonds under this article shall be submitted to the real property taxpayers who are in all other respects qualified electors of the municipality. No bond shall be issued without the assent of a majority of such qualified electors voting at an election held for that purpose as provided in this article."

We need go no further than *Kramer v. Union Free School District*, 395 U.S. 621, 89 S.Ct. 1886, and *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, both decided June 16, 1969.

In *Kramer, supra,* the Supreme Court has held that State Statutory and Constiutional provisions prohibiting the exercise of the voting franchise to some electors, while allowing it to others, must be subjected to close scrutiny to "determine whether the exclusions are necessary to promote a compelling State interest." If there is no compelling State interest to be promoted by the exclusion, the Constitutional and Statutory provisions are violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

As in *Cipriano, supra,* we find the challenged Constitutional provision and the challenged Statutes under which the election was held to contain "a classification which excludes otherwise qualified voters, who are as substantially affected and directly interested in the matters voted upon as those permitted to vote." There was no evidence before this Court which would justify the conclusion that the exclusions under Arizona law are necessary to promote a compelling State interest. Moreover, in the instant case we find no evidence which would justify a distinction between Revenue Bonds and General Obligation Bonds.[2]

In *Cipriano, supra,* in order to avoid significant hardships on cities' bondholders and others, the Court held the rule of that case would be applied prospectively, "only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision."

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[2]The defendants concede that *Kramer* and *Cipriano* require that the election be invalidated insofar as it authorized the issuance of Revenue Bonds.

In the instant case the authorization to issue the securities was not legally complete by June 16, 1969, (the date of the *Cipriano* decision) nor had the time expired within which the election could have been contested. In the instant case we find the Arizona Constitutional and Statutory exclusions involved in the election called by the City of Phoenix and held June 10, 1969, to be violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

IT IS ORDERED that the defendants will be permanently enjoined from the issuance of any securities purportedly authorized by the challeneged election, and the plaintiff's counsel will submit a proposed form of judgment.

DATED this 17th day of November, 1969.

WALTER ELY
United States Circuit Judge

WALTER E. CRAIG
United States District Judge

WM. P. COPPLE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

EMILY KOLODZIEJSKI,
Plaintiff,
vs.
CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITES, CHARLES CASE, JOHN F. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, members of and constituting the City Council of the City of Phoenix, Arizona,
Defendants.

No. Civ-69-335-PHX
JUDGMENT

The Plaintiff's Motion for Preliminary Injunction having been scheduled for argument the 31st day of October, 1969, and the parties having stipulated that all merits of the case be submitted for final determination at the date set for oral argument, and the Court being fully advised in the premises and the Court having heretofore entered its OPINION AND ORDER.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Article 7, Section 13, Arizona State Constitution; Article 9, Section 8, Arizona State Constiution; Title 9, Section 523, Arizona Revised Statutes; and Title 35, Section 455, Arizona Revised Statutes; are violative of the 14th Amendment of the United States Constitution insofar as said sections of the Constitution of the State of Arizona and statutes of the State of Arizona restrict elections to real property taxpayers who are qualified electors of the subdivision.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the special election held on June 10, 1969, pursuant to City of Phoenix Ordinance #4747, be declared, and the same is declared, to be null and void and have no force and effect.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all of the above captioned defendants, their successors, agents, or attorneys be and they are permanently enjoined from taking any further action to sell or issue any bonds purportedly authorized by the special bond election held on June 10, 1969.

DATED: This ..... day of December, 1969.

.....
United States District Judge

.....
United States District Judge

.....
United States Circuit Judge

APPROVED AS TO FORM:

ROBERT BACKSTEIN
ALAN K. POLLEY
Assistant City Attorney